

Supreme Court of the United States,

OCTOBER TERM, 1905.

No.

ORIGINAL.

COMMONWEALTH OF KENTUCKY, *Petitioner,*

vs.

ANDREW M. J. COCHRAN.

**MOTION FOR LEAVE TO FILE PETITION FOR WRIT
OF MANDAMUS.**

The Commonwealth of Kentucky moves for leave to file the annexed petition for writ of mandamus against Andrew M. J. Cochran, district judge of the United States for the eastern District of Kentucky, holding the circuit court of the United States for said district, and for a rule to him to show cause why a writ of mandamus should not issue as prayed for.

N. B. HAYS,
Attorney General of Kentucky.
LAWRENCE MAXWELL, JR.,
Counsel.

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To the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the Commonwealth of Kentucky, shows to the court—

1. That on April 17, 1900, Caleb Powers was duly indicted in the circuit court of Franklin county, Kentucky, by the grand jury of said county, for the crime of being accessory before the fact to the wilful murder of William Goebel, with in said county on January 30, 1900, and was duly arrested and brought before said court for trial.

2. On May 2, 1900, on the petition of said Caleb Powers for a change of venue, said indictment was duly transferred for trial to the circuit court of Scott county, Kentucky.

3. Said Powers was subsequently tried on said indictment in said circuit court of Scott county, and was three times convicted, each of which judgments of conviction, on appeals taken therefrom by him to the court of appeals of Kentucky, was reversed; and on April 4, 1905, said prosecution, on the last of said appeals, was remanded by the court of appeals to the circuit court of Scott county for further proceedings not inconsistent with the opinion of the court of appeals; and on May 3, 1905, said prosecution was set for trial by said circuit court of Scott county at a special term to be held at Georgetown in said county commencing July 10, 1905.

4. On May 3, 1905, said Powers presented to said circuit court of Scott county his petition to remove said indictment and prosecution into the circuit court of the United States for the eastern district of Kentucky, and subsequently filed the same in the circuit court of the United States for said district, together with a transcript of the record of the proceedings in the circuit court of Scott county; and on July 7, 1905, said circuit court of the United States, held by Honorable Andrew M. J. Cochran, district judge of the United States for the eastern district of Kentucky, entered an order upon said petition, taking jurisdiction of said prosecution and awarding a writ of habeas corpus cum causa commanding the jailer of Scott county, Kentucky, in whose custody said Powers then was pursuant to the orders of the circuit court of said county, to deliver him into the custody of the marshal of said circuit court of the United States, to be confined by the marshal in

the county jail of Campbell county, Kentucky, to await his trial in said circuit court of the United States; and in pursuance of said writ said Powers, on July 10, 1905, was taken from the custody of the jailer of Scott county, Kentucky, by the United States marshal for the eastern district of Kentucky, and he is now held by said marshal in pursuance of said orders of the circuit court of the United States for the eastern district of Kentucky.

5. No further proceedings have been taken in the circuit court of the United States for the eastern district of Kentucky, or in the circuit court of Scott county, Kentucky.

6. Said order of the circuit court of the United States was made over the objection of this petitioner, whose attorney general appeared at the hearing in opposition to the petition of said Powers to remove said prosecution into the said court, and on July 7, 1905, said circuit court of the United States, on the petition of your petitioner, allowed an appeal to this court from its said order granting a writ of habeas corpus to take the custody of said Powers from the State court, solely upon the question of its jurisdiction as a court of the United States to make said order, and duly certified said question of jurisdiction to this court.

7. Your petitioner has perfected said appeal and docketed the same in this court as case No. 393, October Term, 1905, and the record has been printed. Said Powers has given notice of a motion to dismiss the appeal, on the ground that said order is not a final order and not appealable, and that the proper remedy of your petitioner is by writ of mandamus from this court to said circuit court of the United States.

8. Your petitioner files herewith a copy of the record of

the said proceedings in the circuit court of the United States for the eastern district of Kentucky, at page 10 of which is printed the said petition of said Powers for the removal of said prosecution into the federal court. Said transcript contains the record of the proceedings in the circuit court of Scott county, Kentucky.

9. Your petitioner submits that said indictment and prosecution against said Powers in the circuit court of Scott county, Kentucky, was not removable therefrom into the federal court, and that the circuit court of the United States for the eastern district of Kentucky was without jurisdiction to issue said writ of habeas corpus, or to assume jurisdiction of said prosecution; and your petitioner prays for a writ of mandamus to the Honorable Andrew M. J. Cochran, district judge of the United States for the eastern district of Kentucky, holding the circuit court of the United States for that district, to command him to remand said indictment and prosecution against said Caleb Powers to the circuit court of Scott county, Kentucky, and to restore the body of said Caleb Powers to the jailer of Scott county, Kentucky, to abide the judgment and orders of the State court.

N. B. HAYS,

Attorney General of Kentucky.

LAWRENCE MAXWELL, Jr.

Counsel.

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NOTICES AND STIPULATION.

I acknowledge notice of the motion for leave to file petition for writ of mandamus, to be heard on Monday, December 11th, 1905, and the receipt of a copy of the motion and petition for a writ.

If the writ is allowed I submit the certified transcript of the record of the proceedings in the circuit court of the United States for the eastern district of Kentucky, which is now on file in the supreme court of the United States, as my return thereto, having set forth in the opinion therein filed

my reasons for removing the prosecution of Caleb Powers into said circuit court of the United States and for awarding a writ of habeas corpus cum causa to take him from the custody of the jailer of Scott county, Kentucky.

A. M. J. COCHRAN,

District Judge of the United States
for the eastern district of Kentucky,
holding the circuit court of the
United States for said district.

To Caleb Powers :

Please take notice that on Monday, December 11th, 1905, or as soon thereafter as she can be heard, the Commonwealth of Kentucky will submit the annexed motion for leave to file petition for writ of mandamus, copy of which is attached to said motion, to the supreme court of the United States.

N. B. HAYS,

Attorney General of Kentucky.

LAWRENCE MAXWELL, Jr.,

Counsel.

I accept service of the above notice this 27th day of November, 1905.

CALEB POWERS.

